

UNITED STATES OF AMERICA,)
)
) CRIMINAL ACTION NO.
 v.) 2:17cr102-MHT
) (WO)
 KENDALL DEWIGHT SHINE)

This cause is before the court on the motion to continue made by defendant Kendall Dewight Shine on July 14, 2017. For the reasons set forth below, the court finds that jury selection and trial, now set for September 5, 2017, should be continued pursuant to 18 U.S.C. § 3161(h)(7) .

While the granting of a continuance is left to the sound discretion of the trial judge, United States v. Stitzer, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an

offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(7)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance would "result in a miscarriage of justice," § 3161(h)(7)(B)(i), or "would deny counsel for the defendant ... reasonable time necessary for effective preparation, taking into account the exercise of due diligence." § 3161(h)(7)(B)(iv).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and Shine in a speedy trial. On August 8, 2017, the magistrate judge issued a 41-page

report and recommendation on Shine's motion to suppress. Before the report and recommendation was issued, Shine's counsel requested and received leave to file supplemental briefing on the motion. Because the report and recommendation will not be under submission until August 22, 2017, there is minimal time for the court to issue a ruling on the magistrate judge's report and recommendation on the motion to suppress and for the parties to prepare for trial in light of that ruling. Accordingly, the current September 5 trial date does not provide enough time for counsel for Shine to prepare for jury selection and trial. A continuance is warranted and necessary to allow counsel for Shine to prepare adequately and effectively for the jury selection and trial in this case.

The government does not object to a continuance.

Accordingly, it is ORDERED as follows:

(1) The motion for continuance of defendant Kendall Dewight Shine (doc. no. 56) is granted.

(2) The jury selection and trial, now set for September 5, 2017, are reset for November 6, 2017, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama.

DONE, this the 17th day of August, 2017.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE